

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits its reply comments in response to the Federal Communications Commission's (Commission or FCC) Public Notice seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) in the above-captioned proceeding.²

NTCA seeks to emphasize that the Commission should limit its actions in this proceeding to non-rural carriers exclusively. The Commission's actions should not affect the calculation of high-cost universal service support for rural ILECs nor hinder the right of rate-of-return carriers to recover properly allocated costs to the interstate jurisdiction. NTCA supports the initial comments filed by other parties urging the Commission to refrain from taking any action in this proceeding that may affect rural ILECs.³ NTCA further recommends that the Commission should indicate clearly that its actions in this proceeding do not alter the existing universal service support mechanisms for rural carriers.

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). All of NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, DA 02-2976, Public Notice (rel. Nov. 5, 2002).

On July 31, 2001, the United States Court of Appeals for the 10th Circuit remanded portions of the Commission's *Ninth Report and Order*, which established a federal high-cost universal support mechanism for non-rural carriers based on forward-looking economic cost (FLEC).⁴ The Court upheld the Commission's adoption of the FLEC model, but determined that the FCC did not provide an adequate explanation as to how the FLEC mechanism would achieve the statutory principles codified in section 254 of the Act.⁵ Nothing in the Court's *Remand Order* directs the Commission to review or change anything in its separate Rural Task Force (RTF) order that established the existing high-cost universal support mechanism for rural rate-of-return regulated ILECs, which is based on a modified version of their embedded cost.⁶

On February 15, 2002, the Commission issued a *Remand Notice* seeking comment on issues remanded by the Court and referred the record it collected in the proceeding to the Federal-State Joint Board on Universal Service for a recommended decision.⁷ On October 16, 2002, the Joint Board issued its decision and stated that its recommendations only "apply to the non-rural high-cost universal service support mechanism and do not

³ See, *Initial Comments of USTA and Initial Comments of NRTA and OPASTCO*.

⁴ *Qwest v. FCC*, 258 F.3rd 1191 (10th Cir. 2001), *In the Matter of the Federal-State Joint Board on Universal Service*, Ninth Report & Order, and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*) (The non-rural FLEC mechanism determines the amount of federal support to be provided to each state by comparing the statewide average cost per-line for non-rural carriers to a nationwide benchmark).

⁵ Specifically the Court concluded that the Commission did not: (1) define and apply adequately the key statutory terms of "reasonably comparable" and "sufficient"; (2) explain sufficiently how it established the funding benchmark at 135 percent of the national average; (3) provide inducements for state universal service mechanisms; and (4) explain how the FLEC funding mechanism will interact with other universal-service programs.

⁶ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for the Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244 (2001) (Rural Task Force (RTF) Order).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order, 17 FCC Rcd 2999, 3010-3011, ¶¶ 25-26 (2002) (Remand Notice).

address the rural mechanism.”⁸ It also stated that its decision “is not intended to apply to rural carriers” and that the Commission did not refer to it the specific question of “how the non-rural high-cost support mechanism will interact with other universal service support programs, including high-cost support for rural carriers.”⁹ It further indicated “while statewide averaging is appropriate in the non-rural mechanism, it may not be appropriate in the high-cost mechanism for providing support to rural carriers.”¹⁰ NTCA agrees and recommends that any substantive review of the rural high-cost support mechanism should require a separate proceeding to fully consider the distinct and long-standing differences between rural and non-rural carriers.

The RTF order provides rural carriers with high-cost universal service support through June 30, 2006. In this order, the Commission carefully considered the differences between carriers serving non-rural study areas versus carriers serving rural study areas. It recognized that many rural carriers lack population densities, serve smaller exchanges, and lack the economies of scale that are generally found in study areas served by non-rural carriers. As a result, the Commission determined that a modified embedded cost mechanism would provide rural carriers with predictable levels of universal service support to can continue to provide affordable telecommunications services to rural America in accordance with section 254 of the Act. NTCA reminds the Commission that the economic, geographic and demographic conditions that apply to large non-rural carriers do not apply to rural carriers. NTCA cautions the Commission that determinations in this remand proceeding, which are not clearly limited to the non-

⁸ *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 02J-2, Joint Board Recommended Decision, ¶ 9 (rel. Oct. 16, 2002) (Joint Board Recommended Decision).

rural FLEC universal support mechanism, may adversely affect the predictability and sufficiency of support to rural carriers serving high-cost areas. NTCA therefore recommends that the Commission indicate clearly that its actions in this proceeding have no impact on the rural carriers or the rural high-cost support mechanism.

The RTF order provides a stable environment for predictable high-cost universal service support to rural carriers for the next 3½ years. The rural high-cost support mechanism is specifically tailored to fit the conditions and needs of rural ILECs serving high-cost areas in rural America through June 30, 2006. The Commission should therefore preserve the stability of the rural high-cost universal service mechanism by indicating clearly that its actions in this remand proceeding do not apply nor affect the application of the RTF order on rural carriers.

Respectfully submitted,

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⁹ Joint Board Recommended Decision, ¶28, note 64.

¹⁰ Joint Board Recommended Decision ¶28.

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 02-2976 was served on this 17th day of January 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

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